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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,942	01/03/2002	Alain M. Sagnard	61301A	7761

109 7590 08/26/2003

THE DOW CHEMICAL COMPANY
INTELLECTUAL PROPERTY SECTION
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EXAMINER	
RHEE, JANE J	
ART UNIT	**PAPER NUMBER**
1772	6

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-6

Office Action Summary	Application No. 10/037,942	Applicant(s) SAGNARD ET AL.	
	Examiner Jane J Rhee	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the c rrespondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 June 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12 and 15-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12 and 15-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-12,21,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reeves et al. in view of Ducharme (5062244).

Reeves et al. discloses a building panel comprising at least two panel domains (figure 3 numbers 132,140), wherein each panel domain has an essentially homogeneous strength and an average compressive strengths (col. 6 lines 31-33) wherein the panel has at least two panel domains having different average compressive strengths (col. 6 lines 31-33) and is essentially free of a combination of hollow and solid foam strands (figure 3). Reeves et al. discloses that the panel has a uniform panel thickness (figure 3). Reeves et al. discloses that the panel has an edge containing a panel domain extending through the thickness of the panel at that edge (figure 7 numbers 132,140,136). Reeves et al. discloses at least one panel domain that is a conformable panel domain that allows the panel to reversibly bend from a planar to a nonplanar configuration (figure 9). Reeves et al. discloses that the panel has a primary face, a face opposing the primary face, a panel thickness, and a slit (figure 9 number 160) penetrating to a depth less than the panel thickness traverses the primary faces or the face opposing the primary face. Reeves discloses that each panel domain

comprises a polymeric foam (col. 3 lines 38-39). Reeves discloses that the panel has alternating conformable and rigid panel domains (figure 3 number 132, 140,136). Reeves discloses that the panel has a perimeter and the perimeter comprises at least one conformable panel domain (figure 3 number 132). Reeves discloses a conformable panel along at least one edge (figure 3 number 132). Reeves discloses that the panel domains are bands (figure 3 numbers 132,140). Reeves discloses that at least one edge of the panel is a conformable domain (figure 3 numbers 132, 140 and 136). Reeves discloses that the panel domains extend through the thickness of the panel (figure 4 numbers 132,140,136).

Reeves fail to disclose a cavity defined by cavity walls that has a compressive recovery that supplies sufficient pressure against the cavity walls to frictionally retain the building panel within the cavity, the pressure being 100 Newtons per square meter or more and 200,000 Newton per square meter or less. Reeves et al. fail to disclose that the two domains differ in average compressive strength by at least 5%. Reeves et al. fail to disclose that at least one panel domain is a conformable panel domain that, when compressed reduces at least one dimension of the panel thereby allowing insertion of the panel into a cavity, wherein the panel also has a compressive recovery that causes frictional retention of the panel within the cavity. Reeves et al. fail to disclose that the panel has at least one edge that comprises a tongue or groove profile.

Ducharme teaches a cavity defined by cavity walls (figure 1 number 36) has a compressive recovery that supplies sufficient pressure against the cavity walls to frictionally retain the building panel within the cavity and since the cavity walls are made

out of masonry building blocks it would have been obvious to one having ordinary skill in the art for Ducharme to obtain sufficient pressure such as 100 Newtons per square meter or more than 200,000 Newton per square against cavity walls to frictionally retain the building panel within the cavity in absence of unexpected results.

Ducharme teaches at least one panel domain is a conformable panel domain that, when compressed reduces at least one dimension of the panel thereby allowing insertion of the panel into a cavity, wherein the panel also has a compressive recovery that causes frictional retention of the panel within the cavity for the purpose of to insulate masonry building blocks (col. 1 line 10). Ducharme teaches that the panel has at least one edge that comprises a tongue or groove profile (col. 3 lines 21) for the purpose of preventing heat loss through the passages when compressed (col. 3 lines 22-23).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Reeves et al. with at least one panel domain is a conformable panel domain that, when compressed reduces at least one dimension of the panel thereby allowing insertion of the panel into a cavity, wherein the panel also has a compressive recovery that causes frictional retention of the panel within the cavity in order to insulate masonry building blocks (col. 1 line 10) as taught by Ducharme.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Reeves et al. with the panel that has

at least one edge that comprises a tongue or groove profile in order to prevent heat loss through the passages when compressed (col. 3 lines 22-23) as taught by Ducharme.

Reeves et al. teaches that one domain has a higher density then the other domain (col. 6 lines 31-32), therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide two domains that differ in average compressive strength by at least 5%, in order to provide a more expandable cell it the lower density area (col. 3 lines 51-52).

2. Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reeves et al. and Ducharme in view of Malone (4824720).

Reeves et al. and Ducharme discloses the panel described above. Reeves et al. and Ducharme fail to disclose that at least one panel domain has an open cell content of 5 percent or 50 percent or more according to American Society for Testing and Materials method D2856A. Reeves et al. and Ducharme fail to disclose that at least one panel domain comprises coalesced polymeric foam strands and wherein the foam strands comprise polypropylene. Reeves et al. and Ducharme fail to disclose that at least one panel domain comprises coalesced polymeric foam strands having interstrand spaces.

Malone teaches coalesced polymeric foam strands that comprise polypropylene (col. 1 lines 14-15, 30) and have interstrand spaces (col. 5 lines 20-22, 33-35) for the purpose of providing cushion properties (col. 1 lines 31-32). Malone teaches the open

cell content of 35 percent (col. 6 line 61) for the purpose of to allow the achievement of improved cushioning of objects particularly at low stat loadings (col. 5 lines 59-61).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Reeves et al. and Ducharme with coalesced polymeric foam strands that comprise polypropylene and have interstrand spaces in order to provide cushion properties (col. 1 lines 31-32) as taught by Malone.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Reeves et al. and Ducharme with the open cell content of 35 percent in order to allow the achievement of improved cushioning of objects particularly at low stat loadings (col. 5 lines 59-61) as taught by Malone.

As to the open cell content of 50% or more, Malone discloses an open cell content of 35% (col. 6 line 61), it would have been obvious to one having ordinary skill in the art at the time the invention was made to have an open cell content of 50% or more since it has been held that discovering an optimum valued of result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205, USPQ 215 (CCPA 1980).

Response to Arguments

3. Applicant's arguments filed 6/13/03 have been fully considered but they are not persuasive.

In response to applicant's argument that Reeves do not disclose a sheet extending through the thickness of the resulting structure, Reeves does disclose the panel domain to extend through the thickness of the structure (figure 3 numbers 132, 140,136). Reeves's panel domain may not extend entirely through the thickness of the structure but still extends through the thickness of structure.

In response to applicant's argument that it is not clear how Reeves et al. with the insert of Ducharme, let alone how to modify such a panel to obtain the presently claimed panel, Reeves et al. discloses the panel with two panel domains (figure 3 numbers 132 and 140) and Ducharme teaches an insulating panel with particular characteristics such as grooves and inserted into a cavity (figure 1 number 16 and 36), therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Reeves et al. panel with the particular characteristics like grooves taught by Ducharme in order to prevent heat loss through the passage when compressed (col. 3 lines 22-23) and into Ducharme's cavity in order to insulate masonary building blocks (col. 1 line 10) as taught by Ducaharme.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for

the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jane Rhee
August 13, 2003

HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

8/22/03